

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )  
Implementation of Section 62(a)(1) of )  
The Cable Communications Policy Act of 1984 )  
As amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )

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MB Docket No. 05-311

**COMMENTS OF Thirty Communities Represented by the Intercommunity Cable  
Regulatory Commission, Regional Council of Governments**

These Comments are filed by thirty communities in the suburbs of Cincinnati, Ohio represented by The Intercommunity Cable Regulatory Commission (a regional council of governments formed under Chapter 167 of the Ohio Revised code.) We are in support of the comments filed by the National Association of Telecommunications Officers and Advisors (“NATOA”). Like NATOA, the ICRC believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

The Federal Cable Act refers to this as a “franchise” so we will use that term in these comments. Also, many communities have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the “franchise” below.

**Cable Franchising in Our Communities**

**Community Information**

The Intercommunity Cable regulatory Commission consortium consists of Cities, Villages and Townships, with a combined population of 107,000 households and subscriber base of 65,000. Our franchised cable provider is Time Warner and our communities have negotiated cable franchises since 1979.

Our Current franchise began in 1994 and expires in 2009. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are currently starting to negotiate a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to our member communities in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have five channels (or capacity) devoted to public, educational and government access; two channels (or capacity) devoted to our local public broadcasting station WCET.

Our franchise contains the following reasonable build schedule for the cable operator: Time Warner had three years to rebuild our entire cable system and two years once the rebuild was complete to replace every converter in customers homes. Our franchise requires that the cable operator currently provide service to the following areas of our community: Time Warner was required to provide service to every household in which a minimum of 25 homes per mile exists and 50 homes per mile as measured from Time Warner's existing Cable System until the system upgrade took place. Time Warner is also required to extend its service to customers if they are located within 1000 feet from existing cable plant as long as at least five customers request service.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: A fiber optic network was to be constructed and in operation within three years of current acceptance of our current franchise. Our cable operator agreed that a violation of this completion date would be subject to liquidated damages. Our cable operator agreed to deploy a new consumer converter device in all subscribers' homes within two years.

Our franchise contains the following insurance and bonding requirements: A general comprehensive public liability indemnifying, defending and saving harmless all our member communities, its officers, boards, commissions, agents or employees from any persons or person occasioned by the operation of the Grantee under our franchise herein granted, or alleged to have been so caused or occurred with a minimum liability of one million for bodily injury or personal injury or death and a million dollars for bodily injury or personal injury or death of any two or more persons in any one occurrence. Property damage is set at a minimum of five hundred thousand for any one incident.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: We have a liquidated damage clause that fines the operator six hundred dollars a day for failure to complete the fiber upgrade and two hundred fifty a day for failure to provide documents or reports and three hundred dollars a day for failure to meet technical standards and three hundred dollars a day for failure to meet customer service standards and failure to meet any requirement in the franchise itself.

The Time Warner cable system serving our community also serves many adjoining communities: In greater Cincinnati Time Warner holds over fifty franchises. In 1994 the thirty ICRC communities worked together to come up with a model franchise to grant to Time Warner Cable Company. This allowed the company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: The Grantee must notify the community of any changes in state or federal law that would conflict with our current franchise agreements.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: We held public hearings in each ICRC community before we started the negotiating process of this current franchise and then before the communities adopted the model franchise each community held a public hearing.

### **Competitive Cable Systems**

The ICRC communities:

- Have never been approached by a competitive provider to provide service, with the exception of three Townships that we had limited franchises in by another company due to density issues.
- Have actively sought out competitive providers, but have not been successful.
- Have not denied any provider the opportunity to serve in our community.
- Do have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

### **Conclusions**

The local cable franchising process functions well in the ICRC communities. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of

facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Intercommunity Cable Regulatory Commission on behalf of its thirty community members therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Communities that are members of the Intercommunity Cable Regulatory Commission:

Amberley Village  
Village of Arlington Heights  
Columbia Township  
Crosby Township  
City of Deer Park  
Deerfield Township  
Village of Elmwood Place  
Village of Fairfax  
Village of Evendale  
Village of Glendale  
City of Harrison  
Harrison Township  
City of Indian Hill  
Village of Lincoln Heights  
Village of Lockland  
City of Loveland

Village of Mariemont  
City of Mason  
City of Milford  
City of Mount Healthy  
City of North College Hill  
City of Reading  
City of Saint Bernard  
City of Sharonville  
City of Silverton  
City of Springdale  
Sycamore Township  
Symmes Township  
Village of Terrace Park  
Village of Woodlawn

Respectfully submitted,

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